

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2005

CORAM:

THE HON'BLE MR.JUSTICE P.K.MISRA

WRIT PETITION NO.30441 OF 2002

AND

WPMP.NO.44599 of 2002 & WVMP.No.1648 of 2002

M/s. Rajalakshmi Textile
Processors Limited,
B.P. Agraharam Road,
Ramanathapuram Pudur Post,
Erode 638 005. ... Petitioner

-vs-

1. The Deputy Chief Inspector
of Factories,
Erode.
2. Kovai Periyar Mavatta Dravida
Panchali Thozhilalar Munetra Sangam,
Rep. By its President,
No.69, Tatabad Street, No.3,
Coimbatore 641 012. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order of the first respondent in E/1234/2001, dated 1.3.2002, served on the petitioner on 4.4.2002, quash the same.

For Petitioner

:Mr.T.S. Sivagnanam

For Respondents-2

:Mr.C.K. Chandrasekaran for

M/s. Row & Reddy

R1

: No appearance

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ORDER

Heard Mr.T.S. Sivagnanam, learned counsel for the petitioner and Mr.C.K. Chandrasekaran, learned counsel for the respondents.

2. The present writ petition has been filed by M/s. Rajalakshmi Textile Processors Limited, challenging the order

passed by the first respondent in E/1234/2001, dated 1.3.2002.

3. The first respondent is the Deputy Chief Inspector of Factories, Erode. There is no dispute that the present petitioner is an industrial establishment as defined under Section 2(3)(a) of Tamil Nadu Industrial Establishments (Conferment Permanent Status to Workmen) Act, hereinafter referred to as the Act. 53 employees working under such establishment as well as some members of the Coimbatore Periyar District Cotton Mills Employees Development Union filed an application before the present first respondent claiming that permanent status to be conferred on such employees. The first respondent held an enquiry and ultimately came to the conclusion that such 53 persons had completed 480 days of service as contemplated under the Act and declared that permanent status is required to be conferred on such persons. Such order/direction is under challenge in the present writ petition.

4. Learned counsel for the petitioner has submitted that the conclusion of the first respondent is based on surmises and conjectures and upon drawal of adverse inference for non-production of some registers, but there is no discussion of the positive materials on record and therefore, such a finding cannot be sustained.

5. I have carefully gone through the order passed by the first respondent. The first respondent has referred to the evidence which had been adduced on behalf of the workmen. He has also referred to a document viz., a tabulation produced by the management. However, the first respondent has drawn adverse inference against the management on account of the fact that the registers and documents which would have shown about the attendance or non-attendance and drawal of salary by the concerned workmen had not been produced. He has also referred to the settlement entered into under Section 12(3) of the Act dated 28.11.1998 which indicated about the requirement of 266 employees.

6. The High Court while deciding a matter under Article 226 of the Constitution of India, does not function as an Appellate Court over the decision of the concerned inferior Tribunal. The High Court is more concerned with the decision making process rather than the merits of the decision itself. In other words, if the High Court comes to the conclusion that the Industrial Tribunal has followed the principle of natural justice, considered the materials on record and has not committed any error of law apparent on the face of record, the High Court is not entitled to come to a different conclusion

on merits merely because it may not agree with some of the reasonings. It does not have the jurisdiction of an appellate authority.

7. Keeping in view the above well settled principle of law, I hardly find any scope to interfere with the conclusions arrived at by the first respondent on reference to the materials on record.

8. Learned counsel for the petitioner, however, strenuously pleaded on the aspect relating to the drawal of adverse inference. It has been submitted by him that the authority does not function as a Court of law and merely because some documents were not available, he has no power to draw any adverse inference. The inevitable contention of the counsel for the petitioner is that the only Courts of law, properly so called, can draw adverse inference for non-production of the documents. I do not think such a wide submission can be accepted. There is no specific rule or procedure contemplated in any Act which authorises the Court of law or quasi judicial authority to draw adverse inference for non-production of relevant documents. This is merely an extension of common sense principle. It is of course true that under the Evidence Act, the parties are required to produce best evidence in support of their case. However, even where the strict rules of the Evidence Act are not applicable in appropriate cases, the authority, who is required to come to a particular factual conclusion, can always draw an inference from any circumstance. The fact that the document which would have shown the presence or absence of a particular workman and Books of Accounts of payment of salary are obviously very vital documents and since the question to be decided was very much dependent upon such facts, it is obvious that the person, who is in custody of such document, is required to produce the same more particularly when several opportunities had been given for production of such documents. Therefore, it cannot be said that the first respondent committed an error of law apparent on the face of the record by drawing adverse inference for non-production of several vital documents. As already indicated, the authority has also referred to other materials on record and had come to a particular conclusion which cannot be categorized as perverse or based on no records. Accordingly, I find no scope to come to a different conclusion.

9. In 2002(4)L.L.N 380 (KASB PUMPS LIMITED, COIMBATORE v. DEPUTY CHIEF INSPECTOR OF FACTORIES, COIMBATORE) it has been observed that,

"Under the Tamil Nadu Industrial Establishments (Conferment Permanent Status to workmen) Act, the

authority namely first respondent can be considered as a quasi judicial authority authorised to enquire into the allegations relating to non conferment of permanent status."

10. In a subsequent decision reported in 2004(3) L.L.N. 598 (SUPERINTENDING ENGINEER, VELLORE ELECTRICITY DISTRIBUTION CIRCLE, VELLORE AND OTHERS v. INSPECTOR OF LABOUR, PERAMBALUR AND OTHERS), a learned single Judge while referring to the above said decision, has also observed that the authority under the Act has jurisdiction to issue a direction for confirming permanent status. It is of course brought to my notice that the above decision of the learned single Judge has been challenged in appeal and an order of status quo has been passed. However, such an order of status quo, which is meant to be followed by the parties to that litigation, does not have the effect of effacing the precedent value of the decision reported.

11. Learned counsel for the petitioner submitted that the petitioner itself is a proceeding unit as the name itself shows that the work was intermittent in character. This is a matter which could have been proved by the petitioner before the first respondent. As a matter of fact, if the documents would have been produced by the petitioner, such a stand would have been either proved or disproved and non-production of documents itself creates a serious doubt regarding the claim of the petitioner. Merely because it is a processing unit, it cannot be assumed that the work was intermittent in nature and the ultimate conclusion arrived at by the first respondent does not require any interference.

12. Having regard to the facts and circumstances of the case, I do not find any scope to interfere with the conclusion arrived at by the first respondent. Accordingly, the writ petition is dismissed. However, there is no order as to costs. Consequently, WPMP.NO.44599 of 2002 and WVMP.No.1648 of 2002 are also dismissed.

dpk/ra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Deputy Chief Inspector
of Factories,
Erode.

2. The President
Kovai Periyar Mavatta Dravida
Panchali Thozhilalar Munetra Sangam,
No.69, Tatabad Street, No.3,
Coimbatore 641 012.

+ 1 cc to Mr.T .S. Sivagnanam Advocate in SR 3956

+ 1 cc to M/S Row & Reddy, Advocate in SR 3918

W.P.No.30441 of 2002

Date: 01.02.2005

ksj (co)

bp



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